IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.8220 OF 2004

and

SPECIAL CIVIL APPLICATIONS NOS.7942, 7947, 8106, 8166, 8188, 8304, 8305, 8312, 8313, 8335, 8363, 8415, 8441, 8444, 8462, 8469, 8487, 8495, 8649, 8945, 10142, 7941, 8070, 7986, 7940, 8409, 8870, 9348 and 7541 all of 2004

with

CIVIL APPLICATIONS NOS. 5437, 5436, 5332, 5333, 5334, 5402, 5479, 5296, 5480, 5399, 5400, 5411, 5478, 5297 of 2004

and

SPECIAL CIVIL APPLICATIONS NOS.8189 to 8209, 8280, 8281, 8282, 8283, 8284, 8285, 8322, 8323, 8324, 8333, 8336, 8342, 8355, 8360, 8370, 8372, 8443, 8465, 8466, 8471, 8536, 8537, 8658, 8721, 8722, 8725, 8728, 8730, 8766, 8767, 8770, 8771, 8774, 8776, 8777, 8778, 8779, 8780, 8792, 8819, 8820, 8821, 8866, 8873, 8876, 8877, 8878, 8880, 8883, 8928, 8954, 8964, 8967, 8976, 8977, 8991, 8999, 9023, 9041, 9042, 9043, 9046, 9049, 9052, 9058, 9076, 9077, 9083, 9131, 9133, 9134, 9135, 9136, 9137, 9140, 9145, 9146, 9163, 9164, 9165, 9166, 9176, 9249, 9342, 9460, 9467, 9499, 9562, 9892 to 9898 all of 2004

and

SPECIAL CIVIL APPLICATIONS NOS. 8650, 8868, 9423, 9075, 9538, 9662, 9463, 8869, 9936, 9939, 9098, 10133, 9160, 10593 and 11455 of 2004

Date of Decision: 09-2004

PARMAR ALPABEN SANABHAI

Versus

STATE OF GUJARAT

(for full cause title, see next sheet)

Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Justice H.K. Rathod, Judge

Whether approved for reporting?

For the petitioners:

MR YN OZA, SR. ADVOCATE WITH M/S. NIRZAR S.DESAI, RN SHAH, HG VAGHELA, BM MANGUKIA, BP GUPTA, MAYUR RAJGURU, KB PUJARA, CL SONI, AJ SHASTRI, SN MEHTA, RJ GOSWAMI, PS CHAUDHARY, VD PARGHI, VH DESAI, UM PANCHAL, HJ NANAVATI, AV PRAJAPATI, NV GANDHI, PD PATEL, MJ PATEL, JT TRIVEDI, AP PATEL, PP PATEL, PS PATEL, AJ PATEL, MK VAKHARIA, AD DESAI, RK MANSURI, MA KHARADI, JV JAPEE, AB JOSHI, RK MISHRA, MS SHAH, SD SUTHAR, VN RAVAL, NK MAJMUDAR, DG NANAVATI, DEVANG VYAS, MAYUR RANA, MRS. KETTY A. MEHTA, MS. SONAL R. SHAH, MS.MAMTA R.VYAS, MS. ARCHANA ACHARYA

For the respondents:

MRS.MANISHA LAVKUMAR SHAH, AGP
M/S.HS MUNSHAW, PRASHANT G.DESAI, MP PRAJAPATI

PER: BHAWANI SINGH, CHIEF JUSTICE (C.A.V.):-

1. As prayed by learned counsel for the parties, matters of Single Bench have been taken up for final hearing along with matters of public interest being heard by this Division Bench.

2. Issue Rule. Heard learned counsel for the parties. This batch of one hundred sixty one petitions are proposed to be decided by this judgment since challenge is directed against selection of Vidya Sahayaks with variation as to grounds of challenge taken by the petitioners. With a view to place emphasis on the axis

of challenge, parties

classified as under:-

Whether Reporters of Local Papers may be allowed to see the Judgment?

(1) Petitioners belong to Gujarat, they have passed qualifying examination from Universities in Gujarat, however, they had obtained the qualification of Trained Graduate from Universities outside Gujarat.

(2) Petitioners challenge age relaxation in favour of S.C, S.T., S.E.B.C., female, physically handicapped, widow and destitute women candidates.

(3) Petitioners challenge requirement of furnishing original certificates along with the applications instead of zerox copies of Certificates.

(4) Petitioners also seek reservation for H.S.C. (Science Stream) pass candidates for the posts of Vidya Sahayaks.

(5) Petitioners also seek District-wise selection of Vidya Sahayaks while some others oppose it.

(6) Petitioners challenge non-recognition of Siksha Visharad for the purpose of Vidya Sahayaks.

(7) Petitioners seek quota for pre-PTC candidates.

(8) Petitioners seek preferential treatment for G.B.T.C. (Government Basic Training Course) as against B.Ed. candidates.

(9) Petitioners seek eligibility of D.Ed (Diploma in Education) candidates for the post of Vidya Sahayak.

(10) Petitioners seek eligibility of T.T.N.C. (Teachers Training in Needle Craft) qualification for the post of Vidya Sahayak.

(11) Petitioners also challenge the recognition of B.P.E. qualification for the post of Vidya Sahayak.

2. Adverting to the material facts of the cases before

answering the submissions advanced by respective parties, State Government formulated the Vidya Sahayak Scheme-1998, for extension of primary education, necessary for free and compulsory education, and provide teachers in the Schools. According to the State, every village with population of 200 should have a Primary School from Std.1 to 4. There are 37898 Primary Schools in the State, out of which, 29796 are run by local bodies, 1566 by Nagarpalikas, and 6536 by private managements. As per survey conducted between 2002-2003, approximate dropout rate is 32.56% in the last five years, for various reasons recorded in the nationwide survey, and one of the reasons being large number of vacancies in the Primary Schools. The recruitment made from time to time could not match with the vacancies in the Schools. Therefore, decision was taken to fill up 15,000 vacancies under the Balguru Scheme. However, 3743 Balgurus could be appointed on account of litigations, political uncertainty and General Elections to the State Assembly. Consequently, State Government introduced the Scheme for appointment of Vidya Sahayaks in 1998 to fill up 20,000 vacancies. Provision for funds for the purpose of providing one School room per teacher has been planned besides involving the Non-Governmental Agencies in the programme. Further assistance is being sought from the Central Government to make the programme successful.

3. Vidya Sahayak Scheme is the result of Government Resolution dated 11-06-1998. Vacant posts in Primary Schools are intended to be filled, thereby providing opportunity of employment to the unemployed in the State. Vidya Sahayak Scheme is improvement on Balguru Scheme introduced by Government Resolution dated 11-06-1998. State proposes to fill up 20,000 posts under this Scheme. The Scheme provides for qualifications, age limits, etc. for schools managed by District Panchayats, Authorised Nagarpalikas, Mahanagarpalikas, constitution of Selection Committees, i.e., District Education Committee, Mahanagarpalika/Nagarpalika Committee. Selection are to be made from trained candidates on the basis of merits of percentage through computerised method. The Scheme also provides for reservation as per the Government Policy, consolidated salary per month, duration and method for absorption. Recruitment and selection of Vidya Sahayaks is to be made in each of the Districts simultaneously by issuance of advertisements in local newspapers at the District level. The Director of Primary Education is empowered to issue administrative instructions for the effective implementation of the scheme, saving of Balguru Scheme, etc.

4. Vidya Sahayak Scheme is in operation since 1998. The validity of the Scheme was challenged in Special Civil Application (SCA) Nos.5218/1998, 8610/1997 & 8193/1997. The validity of the Scheme has been upheld and is not in question. Vidya Sahayak Scheme was introduced in 1998 and 6680 appointments have been made since then. The present recruitment drive seeks to fill up 15481 posts in 25 districts of the State for imparting primary education to children in the age group of 6-14 years studying in Std.1 to 7. The qualification of Trained Graduates is prescribed by Government Resolution dated 05-06-2004.

5. The petitioners submit that they have passed S.S.C/H.S.C. examinations from Gujarat Secondary and Higher Secondary Education Boards. They have also passed B.A./B.Com/B.Sc. and other degree courses from Universities in Gujarat. However, some of them have passed Bachelor of Education (B.Ed.) Degree examination from Universities outside Gujarat State, like Nagpur University, Amravati University, duly recognised under the University Grants Commission Act, 1956 (UGC Act), and have obtained the Training Degree from Colleges/Institutions affiliated to these Universities, also recognised by National Council for Teacher Education (N.C.T.E.) under the National Council for Teacher Education Act, 1993. Petitioners are therefore Trained Graduates in Physical Education. Their qualifications are legal, valid for the purpose of recruitment to the posts and services under the State Government and the Central Government. State has recruited large number of Primary Teachers/Vidya Sahayaks possessing B.Ed. qualification from such Universities in the past. Of course, there are some petitioners, who have obtained all the qualifications and degrees from Universities outside Gujarat, but either they belong to Gujarat or have married in Gujarat and are living in Gujarat. Their submission is, they should also be considered eligible for recruitment of Vidya Sahayaks since they happened to acquire the qualifications from institutions outside the State for some or the other reasons, say, their parents were employed outside the State and/or happened to marry in Gujarat and the spouses already employed in the State of Gujarat.

6. Government Resolution (G.R.) dated 05-06-2004 excludes such candidates from consideration to the post of Vidya Sahayak/Primary Teacher. For facility of reference, it is quoted in extenso:

" To fill vacancies in

Primary Schools

Vidya Sahayak Yojna
To recruit trained
graduate

Government of Gujarat
Education Department
Sachivalay, Gandhinagar.
Resolution No.PRE-1096-3050-K
Date: 05-06-2004.

Reference:

1. Resolution of Education Department No.PRE-1096-3050-1027(98)-K dt.11-06-98.
2. Resolution of Education Department No.PRE-1398-CC-294-K dt.31-06-98.
3. Resolution of Education Department No.PRE-1096-3050-K dt.21-06-2000.
4. Resolution of Education Department No.PRE-1096-3050-K dt.1/8/2000.
5. Resolution of Education Department No.PRE-1096-EM-442-K dt. 1/8/2001.
6. Resolution of Education Department No.PRE-1096-EM-442-K dt. 1/10/2001.
7. Resolution of Education Department No.PRE-1096-3050-K dt. 12/2/2004.

Resolution

The scheme of recruitment of Vidya Sahayak in Primary Schools run by District Panchayat, Authorised Municipalities, Municipal Corporations has been implemented vide reference No.1. Vide resolution mentioned in reference No.-7 the provision has been made for trained graduate. In this connection the Government has decided the following qualifications and rules to recruit trained graduates as Vidya Sahayak:

1. The qualification of trained graduate obtained from the recognised Universities of Gujarat State shall be eligible.
2. For the recruitment of Vidya Sahayak the following qualifications of trained graduate shall be eligible:
   (a) Bachelor of Physical Education (B.P.Ed.)
   (b) Diploma in Basic Education (D.B.Ed.)
   (c) Diploma in Physical Education (D.P.Ed.)
3. The qualification of trained graduate from regional College of Bhopal and Indira Gandhi National Open University shall be eligible. But the graduate qualification should be obtained

from the recognised Universities of Gujarat State.

4. The qualification of trained graduate obtained from the Institute of S.N.D.T. Mahila University established in Gujarat State shall be eligible.

By order and in the name of the Governor of Gujarat.

Sd/-
(Bachubhai Nayi)
Dy. Secretary,
Education Department."

7. Particular challenge is addressed to the requirement of obtaining qualification of trained graduate from the recognised Universities of Gujarat State, non-inclusion of other categories recorded hereinbefore and recognition of qualification of trained graduate from Regional College of Bhopal and Indira Gandhi National Open University (IGNOU) provided the graduate qualification is obtained from the recognised Universities of Gujarat State and recognition of trained graduate qualification obtained from the Institute of S.N.D.T. Mahila University established in Gujarat State. Other points raised by the petitioners against the Scheme have been summarised in the preceding and succeeding parts of the judgment.

8. Therefore, petitioners submit that their exclusion is patently irrational, arbitrary, discriminatory, unjust, unreasonable, contrary to canons of equity, justice, fairplay and good conscious, apart from being violative of Articles 14, 16, 19 and 21 of the Constitution of India. Petitioners maintain that upper age deserves extension, since no recruitment could be made for past some years. Further, they submit that institutions/colleges, through which they obtained the training degree, are recognised by the Universities and also by the State for services under it by Government of Gujarat, General Administration Department Circular No.RDT-1077-1120-K dated September 14, 1989. This apart, these Universities and institutions are recognised under U.G.C. Act and the National Council for Teacher Education Act, 1993 (N.C.T.E.Act). Perusal of N.C.T.E. Act demonstrates that it provides courses or training for teachers and recognises institutions for the purpose and takes action of derecognition, in case the institutions/colleges fail to fulfil the parameters/standards laid down.

9. Petitioners also submit that State should consider the xerox/true copy of original Certificates/Marksheets for appointment to the post of Vidya Sahayak, since prescription of disqualification is arbitrary and object of verification can be fulfilled at the stage of interview, and depriving the candidates from applying at more than one District would not only be arbitrary, but also prevents meritorious candidates from selection, makes selection of non-meritorious candidates easier, thereby substituting demerit for merit. Petitioners also challenge districtwise selection of Vidya Sahayaks. It is submitted that this prescription of disqualification is unconstitutional besides tends to prefer demerit for merit. Other submissions are derecognition of B.P.E. qualification for the post of Vidya Sahayak, reservation for H.S.C. (Science Stream) over H.S.C. (General Stream) candidates, District-wise selection should not be made, Siksha Visharad qualification be recognised for the purpose of Vidya Sahayak, parity in practical marks of P.T.C. candidates with B.Ed. candidates, there should be quota for Pre-P.T.C. candidates, preferential treatment be given for G.B.T.C. candidates as against B.Ed. candidates, candidates possessing D.Ed. qualification be made eligible for the post of Vidya Sahayaks and candidates possessing T.T.N.C. qualification be made eligible for the post of Vidya Sahayaks.

10. Contention of State is that Vidya Sahayak Scheme, 1998, has laudable object of opening schools, providing teachers and employment to educated unemployed. Confining the choice to candidates who acquired educational qualification from Universities in Gujarat State is not violative of Article 16 of the Constitution, Scheme is introduced to provide employment opportunities to trained graduates and P.T.C. pass candidates of the State, there are 6200 unemployed P.T.C. trained candidates in the State besides 1125 C.P.Ed. candidates, and approximately 40,000 unemployed trained graduates. All these candidates had passed their eligibility-qualifying examination from colleges/institutions within the State. They are duly qualified, but are unemployed. With this object, the Scheme has been formulated, and as per the policy decision, G.R. dated 05-06-2004 has been issued. The Regional College of Bhopal is an All India Institution, established under the National Council for Education and Research Training (West Zone). There, seats are reserved for graduates from Gujarat State, therefore, the qualification has been recognised for the purpose of

appointment to the post of Vidya Sahayak. IGNOU undertakes correspondence courses. Trained graduates from this University are considered eligible for the post of Vidya Sahayak, provided graduate qualification has been acquired from recognised Universities situated in the State of Gujarat. Trained graduates from S.N.D.T. Mahila University situated in the State of Gujarat are being accepted for appointment to the post of Vidya Sahayak since this University has been established in Gujarat exclusively for imparting education in Gujarati to women. General Administration Department Circular dated 14-09-1989 contains list of Institutions recognised for recruitment to the posts and services under the State of Gujarat. But, the present appointments to the posts of Vidya Sahayaks are made under a special Scheme known as Vidya Sahayak Scheme created for the sole purpose of giving employment to trained P.T.C. candidates within the State. The degree conferred by the Universities in the said schedule may be valid, but that does not confer any right of appointment to every Government post. The State can prescribe criteria for appointment under special Schemes framed from time to time to make the requirements, as such, this Circular is not relevant to the present case. B.P.E. has been considered one of the qualifications for the post of Vidya Sahayak, therefore, grievance of petitioners to recognise this qualification no longer survives. Similarly, relaxation in upper age limit has been extended to certain special categories like S.C., S.T, S.E.B.C., females, physically handicapped, etc., therefore, seeking mandamus to extend the same for general category candidates does not arise.

11. With regard to challenge to the requirement of submitting original Certificates of eligibility, contention is that it is no longer res integra in the light of Division Bench judgment dated 05-10-1998 in Letters Patent Appeal No.1163 of 1998 (Coram: C.J. K.G. Balakrishnan and M.H. Kadri J.) holding that:

> "The only question raised by the appellants' counsel is that the appellants were denied opportunity to submit applications in all the districts they wanted to apply. There is no denial as such in submitting application. The only condition laid down is that they should submit the applications with the original certificates of PTC and SSC. It is obvious that the authorities wanted to restrict the applicants that they should apply only in one of the districts. Even though the scheme, as such, is State-wise, the appointments are to be made

> District-wise. The authorities are perfectly justified in imposing a condition that the candidate shall apply only in one district. We do not think that it is an unreasonable restriction imposed on the appellants. In the public employment, some time, the candidates may apply in several districts and cause great inconvenience in making selection. As the appellants are not denied opportunity to make applications, we do not think that the condition that the appellants should produce the original certificates of PTC and SCC along with the applications is violative of Articles 14 or 16 of the Constitution of India."

This judgment was followed in Special Civil Application No.9155 of 1998 (Patel Rakesh Kumar vs. State of Gujarat) dated 19-03-1999. Petition for Special Leave to Appeal (Civil) No.6532 of 1999 before the Apex Court was withdrawn on 27-09-1999 with intention to avail the remedy of Appeal before the Division Bench of High Court, therefore, dismissed as withdrawn. However, no Letters Patent Appeal was preferred before the Division Bench of High Court. Restriction has been imposed so that the applicants do not apply in all the 25 Districts. Although Vidya Sahayak Scheme is applicable to the entire State, appointments are to be made District-wise, for which separate advertisements have been issued and selection process undertaken by the District Primary Education Committee of each District. Submitting multiple applications in several Districts would make the selection process administratively unmanageable. Applicants have not been denied the opportunity of making application in District of their choice, therefore, restriction is not unconstitutional and invalid. Otherwise, permitting candidates to apply to different Districts would make the selection process inordinately delayed and incomplete for long time and posts will remain unfilled. Apart from the State, petitioners in SCA No.9348 of 2004 (Patel Parulben Motibhai and others vs. State of Gujarat and others) submit that the prescription of this requirement is reasonable, otherwise, liberty to apply to more than one District would cause great inconvenience in making the selection, and enlarge the scope of competition unnecessarily, therefore, these petitioners submit that applications without original Certificates of eligibility, in other words, applications with xerox copies for the post of Vidya Sahayak be not considered. They submit that even otherwise such applications will not be in conformity with the terms and conditions of the advertisements,

which specifically provide that applications should be accompanied by original certificates and one certified copy of the same, and non compliance would entail rejection of the application.

12. With regard to reservation for H.S.C. (Science Stream) candidates, it is stated that the grievance is based on assumptions. There may be reservation for H.S.C. (Science Stream) candidates to P.T.C. course to the extent of 30%, but same reservation is not necessary at the stage of employment. Both the categories, P.T.C.(H.S.C.General Stream) and P.T.C.(H.S.C.Science Stream) may be treated equally, and the contention that P.T.C. candidates with science subjects secure less marks as compared to P.T.C. candidates with general subjects is illogical. Contention with regard to equal marks for assessment for P.T.C. candidates and trained graduate does not survive having been allowed.

13. Contention that Siksha Visharad of Hindi Sahitya Sammelan of Ahmedabad be considered equivalent to B.Ed. is opposed on the ground that there is no regular teaching. Simply, study material is communicated to the candidates, examinations held and Certificates issued by this body, so, such Certificates cannot make the candidate eligible. This apart, N.C.T.E. has also not recognised this body.

14. Quota for pre-P.T.C. candidates cannot be provided since pre-P.T.C. degree holders are not equivalent to P.T.C. candidates. They are allowed to teach only Junior and Senior Kindergarten students. Moreover, it is not recognised by N.C.T.E. for the post of Primary Teachers. P.T.C. candidates are available, therefore, they should be given appointments. More candidates are available since Government has given permission to start P.T.C. courses in 210 colleges and these P.T.C. candidates would be rendered jobless.

15. In Special Civil Application No.10133 of 2004, contention is that G.B.T.C. (Government Basic Training Course) candidates be extended preference over B.Ed. candidates, since G.B.T.C. is equivalent to P.T.C., which is the basic qualification for teaching Primary class Std.1 to 5, and B.Ed. candidates have been made eligible by Government Resolution dated June 21, 2000, accepted in Full Bench decision in Special Civil Application No.8075 of 2001 (Sudip Tripathi and others vs. State of Gujarat and others) decided on 03-12-2003 accepting the contention of State pursuant to grant of permission by N.C.T.E. to employ B.Ed. qualified

candidates in Primary Schools by giving abridged course training.

16. T.T.N.C. (Teacher Training in Needle Craft) is not recognised for teachers for this level of students. There is no such course being taught in primary classes. However, it is being taught at 10+2 level. Government Resolution dated 22-12-1989 stands superseded by G.R. dated 27-04-1994, therefore, T.T.N.C. candidates are not eligible.

17. It is contended that Diploma in Education (D.Ed.) of Urdu medium obtained from Institutions located in Maharashtra recognised by N.C.T.E., Bhopal, by letter No.1177-N.C.T.E.(Bhopal) dated 29-05-2000, should be considered equivalent to P.T.C. As per advertisement such candidates are covered, but State is considering candidates possessing Diploma in Education (Gujarati Medium) eligible for the post of Vidya Sahayak. Diploma in Education was recognised vide Government Resolution dated 22-06-1978. However, it is cancelled by Government Resolution dated 04-05-2004. It is not a degree course equivalent to B.Ed., so it is not considered. Validity of Government Resolution dated 04-05-2004 has not been challenged.

18. Petitioners submit that age relaxation should be extended to all the candidates, and confining the same to categories like S.C., S.T., S.E.B.C., females, Physically handicapped, destitute women, etc. is irrational, arbitrary, discriminatory and violative of the Constitution. State contends that age relaxation has been extended to these categories in public interest permissible under Articles 14, 16(4) and 46 to ensure upliftment of these categories requiring special attention.

19. Having referred the material facts, we proceed to decide the questions specifically advanced by counsel for respective parties. Petitioners submit that they belong to Gujarat, they have passed qualifying examination from Universities in Gujarat, except one Jalela Jyotsna Jatashankar (petitioner in SCA 8870/2004), who belongs to Gujarat, but has passed both the examinations from outside Gujarat. Simply because they obtained qualification of trained graduate or otherwise trained graduate from Universities outside Gujarat, they should not be denied consideration and appointment to posts of Vidya Sahayaks. The colleges/institutions are affiliated to Universities recognised by U.G.C. N.C.T.E. Even otherwise, candidates possessing requisite qualification

should not be prevented from seeking employment under the State irrespective of the State to which they belong to and the institution/college they obtained the degree. Of course, it should be recognised by the University and N.C.T.E. Candidates from IGNOU and Regional College, Bhopal, have been made eligible along with candidates who have obtained the qualification of trained graduate from colleges/institutions recognised by Universities in Gujarat, but those who obtained the same from institutions/colleges affiliated to other Universities have been deprived of the benefit of G.R. dated 14-09-1989 enabling candidates to seek employment in State services having obtained the qualification from Universities annexed to the G.R. and the petitioners have also qualified from institutions/colleges under these Universities. Smt.Manisha Lavkumar, learned Assistant Government Pleader, submits that it is not reservation on basis of domicile. Institutional preference is permissible. However, it is a special scheme, therefore, State can confine the eligibility to the Universities in Gujarat, the object being to provide employment to thousands of unemployed candidates, who have done the course from Universities of the State. Appointments are not being made on the basis of residence, but on local requirement of the State.

20. University Grants Commission Act has been enacted to inquire into the financial needs of the Universities and allocate and disburse grants to Universities for any general or specific purpose. The Commission has the power to recommend to any University the measures necessary for the reform and improvement of University education and to advise the University concerned upon the action to be taken for and to advise the University concerned upon the action to be taken for the purpose of implementing such recommendation. It is an expert body to advise the Central Government on problems connected with the coordination of facilities and maintenance of standards in Universities. The Commission in consultation with the University concerned, will also have the power to cause an inspection or inquiry to be made of any University established by law in India and to advice the University on any matter which has been the subject of an inquiry or inspection. It also advises, whenever such advise is sought, on the establishment of new Universities. Perusal of various provisions of the Act plainly demonstrate that University Grants Commission recognises and lays down qualifications for teachers and interact with the Universities on matters of standards of education and degrees issued by them. There is no

dispute that colleges/institutions affiliated to Universities outside Gujarat are covered by the provisions of the U.G.C. Act. The qualifying degrees in these cases are recognised, and fulfil the parameters and standards laid down by the University Grants Commission. There is National Council for Teacher Education Act, 1993. National Expert Body created under it advises the Central Government and State Governments on all matters pertaining to teacher education. It has been established to maintain the standards of teacher education and provide guidance regarding curricula, objective being determination, maintenance and coordination of standards of teacher education, laying down norms and guidelines for various courses, promotion of innovation in this field, and establishment of suitable system of continuing education of teachers, further to phase out substandard institutions and courses in teacher education. It is also empowered to grant recognition to the institutions for teacher education and recognise institutions for new courses or training in teacher education. The training degree obtained by the petitioners are from institutions/colleges recognised by U.G.C. and N.C.T.E. The degrees/diplomas/certificates obtained from Universities are recognised by General Administrative Department Circular dated September 14, 1989 and acceptable to the State for the purpose of recruitment to the posts and services under the State Government. Till previous years, candidates from outside colleges/institutions were given employment. Confining the intake to Universities in Gujarat amounts 100% reservation, based on domicile, which is constitutionally impermissible, and acting contrary to G.R. dated 14-09-1989.

21. Our attention is drawn to Apex Court decision in Harshendra Choubisa and others v. State of Rajasthan and others ((2002) 6 SCC 393). It holds that preferential treatment by addition of bonus marks to the applicants belonging to the same district and the rural areas of that district would amount to discrimination which falls foul of Articles 14 and 16. Classification on the basis of residence, for the purpose of offering pubic employment, unless based on scientific study, cannot be upheld on some broad generalisation, artificial differentiation or irrelevant assumptions. In Kailash Chand Sharma v. State of Rajasthan and others ((2002) 6 SCC 562) it is held that policy decision must pass the test of Articles 14, 15 and 16 of Constitution of India. (See also D.P.Joshi v. State of Madhya Bharat and another (AIR 1955 SC 334), D.N.Chanchala v The State of Mysore and others (1971(2) SCC 293), Dr.B.L.Asawa v.

State of Rajasthan and others ((1982) 2 SCC 55), Dr.Pradeep Jain and others v. Union of India and others ((1984) 3 SCC 654) Anant Madaan v. State of Haryana and others ((1995) 2 SCC 135), Saurabh Chaudri and others v. Union of India and others ((2003) 11 SCC 146), AIIMS Students' Union v. AIIMS and others ((2002) 1 SCC 428, Smt. Daxaben Kuberbhai Pandya v. P.V.Patel and others (2004(2) GLR 1347).

22. Vidya Sahayak Scheme is introduced vide G.R. dated 11-06-1998 and 6680 appointments have already been made. The scheme does not provide for the conditions imposed in G.R. dated 05-06-2004. It is stated that large number of candidates who have obtained qualification and training from institutions/colleges affiliated to Universities in Gujarat are unemployed, therefore, with a view to employ them, conditions have been imposed. We are not impressed by this submission. Confining the choice to candidates to institutions recognised by the Universities of Gujarat suffers from vice of irrationality. Candidates failing to seek admission in colleges/institutions recognised by Universities of Gujarat moved out to do the course from colleges/institutions recognised by the Universities outside Gujarat. Candidates may go out of Gujarat for better or specialised study. They may go out for reasons beyond their control, say, where parents of a candidate are in service, therefore, he/she has to undertake the course at that place. There may be cases where candidates of other States obtain qualification of trained graduate from colleges/institutions recognised by University of Gujarat are eligible. Therefore, if the object is to eradicate unemployment, then a person belonging to Gujarat should not be deprived of employment for having studied/trained outside Gujarat, and candidates of other States who have obtained the trained graduate qualification from college/institution recognised by Universities of Gujarat have been made eligible. Further, qualification of trained graduate from Regional College of Bhopal and IGNOU are eligible provided the graduate qualification is obtained from recognised Universities of Gujarat State. There is no justifiable object behind this inclusion and exclusion of those who obtained qualification of trained graduate from other institutions/colleges. There may be, as pointed above, circumstances which compel persons to obtain the qualification of trained graduate from outside college/institution. Candidly, we are of the opinion that this condition is unjust and irrational. Candidates obtaining qualification of trained graduate or other qualification prescribed for the post of Vidya Sahayak

whether obtained from institutions recognised by Universities of Gujarat State or other Universities outside Gujarat should be considered eligible for the post of Vidya Sahayak provided the qualification is obtained from Universities recognised by the U.G.C. and N.C.T.E. Classification of candidates on the basis of candidate having done the course from institution/college under Universities of Gujarat and outside Gujarat, is unreasonable, therefore, liable to be set aside. Even otherwise, it may amount to creating condition of "local candidate", which is violative of Article 14 of the Constitution. (See Union of India and others, etc. etc. vs. Sanjay Pant and others, etc. etc. (AIR 1993 SC 1365 and A.V.S.Narsimharao and others vs. State of Andhra Pradesh (AIR 1970 SC 422)). Further it seems to be a case of wholesale institutional preference which is impermissible (See AIIMS Students Union (supra).

23. Next question for consideration is whether the requirement of filing original certificates is reasonable. Learned counsel for the parties submit that candidates would be deprived of applying in more than one District if in one District one has submitted original certificates for seeking employment. This question has come up for consideration before this Court in the past. In Patel Nanjibhai K. Vs. District Education Officer (SCA 6504/1998) decided on 13-08-1998, N.N.Mathur J. did not decide the question, instead gave directions on the facts of the case. In Panchal Vijaylakshmi Bapulal vs. District Primary Education Officer (SCA 3314/1999) decided on 03-05-1999, this condition was held arbitrary and unjustified, therefore, candidates could apply with attested xerox copies. However, the Division Bench judgment was not brought to the notice of the learned Single Judge, who could be bound by the principle of precedent (See Jabalpur Bus Operators Association v. State of Madhya Pradesh (AIR 2003 (M.P.) 81). In Chauhan Vanraj Singh Ratansing vs. District Primary Education Officer (SCA 4761/1999) decided on 25-03-2004 Ravi S. Tripathi J. allowed the claim without following the Division Bench decision of this Court in Letters Patent Appeal No.1163 of 1998 (Yogi Vinukant Shakerlal vs. District Primary Education Officer) decided on 05-10-1998 holding that problem required to be solved without recording specific reasons for taking the course, otherwise, Single Bench is bound by the Division Bench decision. In Hasmita Nathabhai vs. A.O. decided on 13-12-1999 in Special Civil Application No.9834 of 1999, M.R.Calla J. seems to have taken the line of N.N.Mathur J and S.K.Keshote J. In Patel Rakeshkumar (SCA 9155/1998) decided on 19-03-1999, Ms. Doshit J.

followed the Division Bench decision (Coram:C.J. K.G.Balakrishnan and M.H.Kadri J.) in Letters Patent Appeal No.1163/1998 in Special Civil Application No.6653/1998 decided on 05-10-1998. Consequently, we are in entire agreement with the view taken by the Division Bench that condition of filing original certificates/testimonials with the application is reasonable. It does not prevent a candidate from applying to the post, otherwise, filing of applications in every District would create difficulties to administration in assessing and finalising the selection of the candidates. (See also K.G.Ashok and others v. Kerala Public Service Commission and others ((2001) 5 SCC 419).

24. Another facet of question is the selection is districtwise, therefore, illegal, in the context of some pronouncements of the Apex Court as contended by counsel for the parties. There is no dispute that Vidya Sahayak Scheme, 1998, is a State Scheme. However, posts of Vidya Sahayaks are in primary schools of District Panchayats, Authorised Nagarpalikas and Mahanagarpalikas, where there is deficiency of teachers. Therefore, vacancies are being filled up under these bodies, falling in different Districts. Consequently, it cannot be held to be districtwise selection. Moreover, it cannot be called districtwise selection, simply because candidate can apply at one place with the original certificates.

25. Further, it was contended that age relaxation granted in favour of S.C., S.T., S.E.B.C., female, physically handicapped, widows, destitute women candidates should also be extended to the petitioners. We find that these are special categories requiring special treatment. Equals have to be treated equally. Unequals cannot be treated equally. Petitioners do not fall in these categories, therefore, they cannot complain violation of Articles 14 and 16(1) of the Constitution of India. The age relaxation in favour of these candidates is absolutely just, reasonable, rational, equitable and constitutional. They deserve special treatment, which is being permitted to them. The contention, therefore, deserves to be rejected.

26. The contention that there should be reservation for H.S.C. (Science Stream) candidates for the post of Vidya Sahayaks since they cannot compete with other General Stream candidates is not justified as they cannot have better marks than the other category. Simply because they are extended 30% reservation at admission stage in P.T.C., claim for reservation in employment on

that basis is not justified for reasons asserted by them and contention that State had in mind and decided as such on the file, is not there anywhere, nor placed before us for perusal by the State.

27. Similarly, claim for reservation of Siksha Visharad candidates for the purpose of selection for the posts of Vidya Sahayaks cannot be accepted since the course taken by them is neither a regular course nor recognised by Universities in Gujarat or N.C.T.E.

28. Claim by Pre-P.T.C. candidates is not justified, as it is not recognised by the State and N.C.T.E for teaching in Primary Schools. It is a course meant for classes lower than primary classes, therefore, the claim of Pre-P.T.C. qualified candidates is rejected.

29. Similarly, candidates possessing D.Ed. qualification cannot seek consideration for the post of Vidya Sahayak since this qualification stands derecognised by the Government order dated 04-05-2004, validity of which is not under challenge, therefore, the contention is rejected.

30. Candidates possessing T.T.N.C. qualification have not been made eligible for the post of Vidya Sahayak, since this subject is not being taught at primary level and it has been stopped by G.R. dated 27-04-1994. Apart from the aforesaid, no other contention was raised.

31. What emerges out of the aforesaid discussion is that:

(1) condition no.1 of G.R. dated 05-06-2004 is set aside. All the petitioners/candidates possessing qualification of trained graduate from any recognised University are eligible for being considered for the post of Vidya Sahayak.

(2) the requirement of filing original certificates/testimonials and conditions imposed in the advertisements as to filing of original certificates/testimonials is upheld, and non-filing entailing rejection of application is upheld.

(3) age relaxation in favour of certain special category candidates/petitioners like S.C., S.T., S.E.B.C., physically handicapped, females, widows, destitute women, etc., is upheld, and

claim for the same relaxation by general candidates/petitioners, is rejected.

(4) claim by petitioners/candidates possessing H.S.C.(Science Stream) qualification for reservation to the post of Vidya Sahayak is rejected.

(5) claim that selections are districtwise, therefore, unconstitutional, is rejected.

(6) claim of petitioners/candidates for recognition of Siksha Visharad qualification for consideration for the post of Vidya Sahayak, is rejected.

(7) claim of petitioners/candidates possessing pre-P.T.C. qualification for equation with petitioners/candidates possessing P.T.C. qualification, is rejected.

(8) claim of petitioners/candidates possessing G.B.T.C. qualification for preferential treatment, as against petitioners/candidates possessing B.Ed. qualification, is rejected.

(9) claim for eligibility by petitioners/candidates possessing D.Ed. qualification for consideration for the post of Vidya Sahayak, is rejected.

(10) Claim of eligibility by petitioners/candidates possessing T.T.N.C. qualification for consideration for the post of Vidya Sahayak is rejected.

(11) Claim of petitioners/candidates to derecognise B.P.E.qualification for the post of Vidya Sahayak is rejected.

No other point was urged.

In view of the above, Special Civil Applications Nos.8220, 7942, 7947, 8106, 8166, 8188, 8304, 8305, 8312, 8313, 8335, 8363, 8415, 8441, 8444, 8462, 8469, 8487, 8495, 8649, 8945, 10142, 7941, 8070, 7986, 7940, 8409, 8870, 9348 and 7541 of 2004 are allowed to the aforesaid extent. Rule is made absolute.

Special Civil Applications Nos. 8189 to 8209, 8280, 8281, 8282, 8283, 8284, 8285, 8322, 8323, 8324, 8333, 8336, 8342, 8355, 8360, 8370, 8372, 8443, 8465,

8466, 8471, 8536, 8537, 8658, 8721, 8722, 8725, 8728, 8730, 8766, 8767, 8770, 8771, 8774, 8776, 8777, 8778, 8779, 8780, 8792, 8819, 8820, 8821, 8866, 8873, 8876, 8877, 8878, 8880, 8883, 8928, 8954, 8964, 8967, 8976, 8977, 8991, 8999, 9023, 9041, 9042, 9043, 9046, 9049, 9052, 9058, 9076, 9

9136, 9137, 9140, 9145, 9146, 9163, 9164, 9165, 9166, 9176, 9249, 9342, 9460, 9467, 9499, 9562, 9892 to 9898, 8650, 8868, 9423, 9075, 9538, 9662, 9463, 8869, 9936, 9939, 9098, 10133, 9160, 10593 and 11455 all of 2004 are dismissed. Rule is discharged. Interim order(s) stand vacated. Civil Applications shall also stand disposed of to the aforesaid extent.

(BHAWANI SINGH)
CHIEF JUSTICE

(H.K. RATHOD)
JUDGE

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